

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54204; File No. SR-ISE-2006-38)

July 25, 2006

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Extend the Linkage Fee Pilot Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 3, 2006, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis for a pilot period through July 31, 2007.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend until July 31, 2007, the current pilot program regarding transaction fees for trades executed through the intermarket options linkage (the "Linkage"). Currently pending before the Commission is a filing to make such fees permanent.<sup>3</sup> The text of the proposed rule change is available on the ISE's Web site at (<http://www.iseoptions.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See SR-ISE-2003-30 (the "Permanent Fee Filing").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to extend for one year the pilot program establishing ISE fees for Principal Orders ("P Orders") and Principal Acting as Agent Orders ("P/A Orders") sent through Linkage and executed on the ISE. The fees currently are effective for a pilot period scheduled to expire on July 31, 2006,<sup>4</sup> and this filing would extend the fees through July 31, 2007. The Exchange notes that in addition to the Permanent Fee Filing, the Exchange filed one other Linkage related fee filing that proposes to increase from \$0.15 per contract to \$0.24 per contract the fee for P Orders sent through Linkage and executed on the ISE.<sup>5</sup>

The three fees the ISE charges for these orders are: the Firm Proprietary execution fee of \$0.15 per contract for trading on the ISE; a surcharge of between \$.05 and \$.15 for trading

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<sup>4</sup> See Securities Exchange Act Release No. 52168 (July 29, 2005), 70 FR 45454 (August 5, 2005) (extending the Linkage fee pilot program until July 31, 2006).

<sup>5</sup> See Securities Exchange Act Release No. 54074 (June 30, 2006), 71 FR 38917 (July 10, 2006) ("P Order Fee Filing").

certain licensed products; and a \$.03 comparison fee (collectively “linkage fees”).<sup>6</sup> These are the same fees that all ISE Members pay for non-customer transactions executed on the Exchange.<sup>7</sup> The ISE does not charge for the execution of Satisfaction Orders sent through Linkage and is not proposing to charge for such orders.

In the Permanent Fee Filing, the ISE discusses in detail the reasons why it believes it is appropriate to charge fees for P Orders and P/A Orders executed through Linkage. ISE believes that market makers on competing exchanges always can match a better price on the ISE and never are obligated to send orders to the ISE through Linkage. However, if such market makers do seek the ISE's liquidity, whether through conventional orders or through the use of P Orders or P/A Orders, ISE believes it is appropriate to charge its Members the same fees levied on other non-customer orders. Because the Commission is continuing to study Linkage in general and the effect of fees on Linkage trading, the proposal would extend the current pilot program for Linkage fees<sup>8</sup> for one year while the Commission considers the Permanent Fee Filing.

## 2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(4) of the Act<sup>9</sup> that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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<sup>6</sup> Pursuant to other pilot programs, certain linkage fees may not apply during the Linkage pilot program.

<sup>7</sup> The ISE charges these fees only to its Members, generally firms who clear P Orders and P/A Orders for market makers on the other linked exchanges.

<sup>8</sup> Under the current pilot program, while fees for both P Orders and P/A orders are currently set at \$.15 per contract, the ISE has proposed to increase the fee for P Orders to \$.24 per contract in the P Order Fee Filing.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2006-38 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2006-38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the

proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2006-38 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>10</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>11</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>12</sup> which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2007 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

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<sup>10</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the Federal Register. The Commission believes that granting accelerated approval of the proposed rule change will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Exchange and the Commission further consider the appropriateness of Linkage fees.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-ISE-2006-38) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Nancy M. Morris  
Secretary

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<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> Id.

<sup>15</sup> 17 CFR 200.30-3(a)(12).